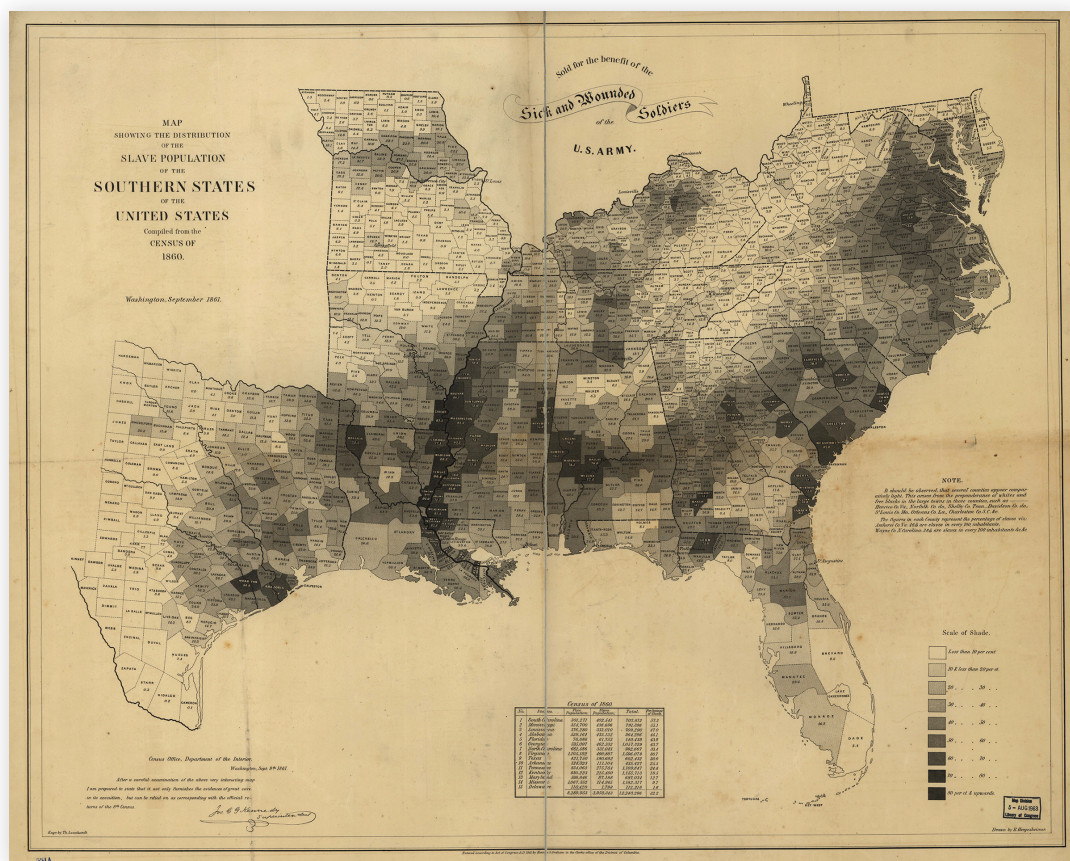


Gleaning Information About Enslaved Ancestors from Probate Files

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"Map Showing the Distribution of the Slave Population of the Southern States of the United States," Census.gov (https://www.census.gov/history/pdf/1860_slave_distribution.pdf).

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Researchers tracing Freedmen¹ face a host of challenges, including severed family ties due to involuntary separations and very few records that contain surnames for enslaved people. These obstacles make it less likely for genealogists to find direct evidence of identities or familial relationships during the antebellum period. Effective research is possible, however, by using sources created by or in relation to slaveholding families. An enslaver's probate records are particularly rich in genealogical

information, because slaveholdings represented valuable assets and interested parties had a keen interest in accurate accountings.²

Enslaved people in probate

In American law, the term *probate* is commonly used to include all proceedings relating to the disposition of property owned by a decedent.³ The focus of this article is on the southern states

Websites cited in this article were viewed on 19 November 2021.

1. *Freedmen* refers to those who were formerly enslaved. Randall N. Miller and John David Smith, "Freedmen," *Dictionary of Afro-American Slavery* (New York, N.Y.: Greenwood Press, 1988), 267.

2. Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014), 350. "By 1860, the eight wealthiest states in the United States, ranked by wealth per white person, [included] South Carolina, Mississippi, Louisiana, . . . Georgia, Alabama, Florida, and Texas—seven states created by cotton's march west and south."

3. Henry Campbell Black, "Court of Probate" and "Probate," *Black's Law Dictionary* (St. Paul, Minn.: West Publishing Co., 1968), 433, 1366.

Inventory and appraisement of certain negroes (Deceased by the Court of Equity to) belonging to the Estate of Charles Simmons dec. Filed in the District of Laurens District of South Carolina the 24 March 1823.

Sall and her child Stephen or Henry about 18 months old	530	00
Amey about two years old	350	00
Mary about eight years old	300	00
Robert about four years old	225	00
Lazett about five or six years old	175	00
	1600	00

Laurens District The purpose of a warrant of appraisement issued by David Anderson Esquire a Justice of Laurens District to appraise certain negroes above named belonging to the estate of Charles Simmons dec. Filed in Laurens District.

Figure 1. Charles Simmons "inventory and appraisement of certain negroes," 1823.

for which slave census schedules were included in the 1860 US census; they had uniformly settled on the treatment of enslaved people as personal property.⁴ Thus, probate proceedings that involved slaveholdings followed the same basic procedures applicable to other forms of personal property.

An executor was appointed to act for the estate and oversee the process—including periodic accountings for the proceeds of selling or hiring out enslaved people. They were inventoried and appraised, and those entitled to receive distributions from the estate were notified.

A decedent's will generally controlled who was to receive enslaved people, but the resolution of ownership issues could occur by operation of statutory law. In either case, litigation in equity court might determine the actual distribution of enslaved people.

Intestate law

If a person died intestate (he or she had never executed a will), statutory rules applied to define the heirs at law. For example, the 1824 intestate statute in North Carolina prescribed a one-third share to the wife of the intestate and equal parts of the balance to any children.⁵ Understanding intestate law could help in tracing the ownership of an enslaved person.

Litigation in equity

Equity court cases were often initiated when a proposed distribution was called into question. Equity courts functioned parallel to courts of law but did not follow legal precedents. Because equity court decisions took all facts and circumstances into account, they usually include much more information about enslaved people than is ordinarily found in probate files.

For example, the 1791 will of Charles Simmons gave rise to an 1823 equity court case in Laurens District, South Carolina.⁶ The case addressed whether an enslaved woman named Sall and five enslaved children should be included in the estate of the decedent or that of his widow. Figure 1 is an inventory in the probate file that names Sall as the mother of the youngest child and approximates the ages of all the children.⁷

The probate file itself provides no information about Sall's age, origins, or relationship to the other four children. Sall's age is given in the sale bill (figure 2) attached as an exhibit to an equity court pleading;

State of South Carolina Know all men by these presents I Elizabeth Simmons of the said State and County of Laurens do hereby certify that I have sold unto Mr. John Simmons a Negro Boy named Moses about 10 or 14 years of age and likewise a Negro Child named Sarah about 2 years of age to have and to hold for said Negroes to her the said Elizabeth Simmons her heirs and assigns for ever, and the said John Simmons for my self my heirs and assigns will warrant and defend the aforesaid Negroes against the Claim of any Person whomsoever who of it set my hand this 24th of December 1793 John Simmons

Figure 2. John Simmons to Elizabeth Simmons, bill of sale for slaves, 1793.

4. "Map Showing the Distribution of the Slave Population of the Southern States of the United States," *Census.gov* (https://www.census.gov/history/pdf/1860_slave_distribution.pdf). Also, B. W. Leigh, sec. 47, "Slaves declared personal estate," *The Revised Code of the Laws of Virginia: Being a Collection of All Such Acts of the General Assembly, of a Public and Permanent Nature, as Are Now in Force, with a General Index* (Richmond: Thomas Ritchie, 1819), 431; Google Books (<https://books.google.com/books?id=ATUwAAAAAYAAJ&>).

5. John Louis Taylor, Chief Justice of the Supreme Court, *A Digest of the Statute Law of North Carolina Relative to Wills, Executors and Administrators, the Provision for Widows, and the Distribution of Estates* (Raleigh, N.C.: J. Gales & Son, 1824), 88.

6. Charles Simmons & David Anderson v. John Simmons, Sarah Madden, Elizabeth Smith, William Simmons, John Garlington, Nehemiah Franks, & Jane his wife, Equity Court, Laurens District (1823), No. 25, "Washington District Equity Court, Western Circuit, Partition of Estates, 1803–1826"; microfilm C50, Laurens County, South Carolina Library, Laurens. Bill of complaint, Charles Simmons and David Anderson, filed 5 June 1822, fol. 114r–116r.

7. Laurens Co., Probate Court, box 66, package 11, estate of Charles Simmons (1822), "Inventory and appraisement of certain negroes," 24 March 1823.

to the Estate of the said Charles Simmons and that the whole of
the other negroes (viz. Bob, Amie, Sophia, Nancy & Elizabeth
bequeathed and devised as above stated by the said
Elizabeth Simmons on the Children and increase of the said
negro girl Sall—four orators therefore conceive that the

Figure 3. Excerpt from Simmons and Anderson complaint naming all five children as the increase of Sall, 1822.

To them their heirs and assigns. I also give to my wife my horse
Henry "Carriage Driver" during her natural life and at her
death to be paid by the Competent Authority. And at her death
to be given one Hundred Dollars—

Figure 4. Excerpt from William Polk will, 1834.

she was about two years old when she came into the possession of the Simmons widow in 1793. The equity court complaint notes her origins in Virginia and—in the excerpt in figure 3—states that she was the mother of all five children.⁸

Locating antebellum probate files

The surname used by a Freedman after emancipation may point to the identity of a former enslaver with an antebellum probate file. Keep in mind, however, that Freedmen may not have used the surname of the last enslaver. A prime example is Henry Jett who was enslaved by William Polk of Raleigh, North Carolina. Figure 4 is an excerpt from Polk's will providing that his "Servant Henry, 'Carriage Driver'" was to be freed on the death of Polk's wife.⁹

Despite his close association with Polk,¹⁰ Henry Jett did not use his enslaver's surname after emancipation. Information in post-bellum records made it possible to connect him to Polk. With the

exception of the 1880 US census—where the enumerator may have just assumed that he used the Polk surname, given his well-known association with the Polk enslavers—he was documented as Henry Jett/Gett in all other extant records.¹¹

To begin, identify the location of a Freedman on the date of emancipation or

as close to that date as possible, as that is likely the location where the individual was last enslaved. The 1870 US census was the first that called for the enumeration of all African Americans with surnames, but earlier federal or state records might also pinpoint a geographic location and a surname. For example, Alabama was the first state to conduct a census of all residents after the Civil War, in 1866.¹² The field office records of the Bureau of Refugees, Freedmen, and Abandoned Lands, which begin in 1865, contain labor contracts between Freedmen and former enslavers.¹³

A twentieth-century vital record could name ancestors who were enslaved during the antebellum period. Consider the 1938 death certificate of B. ["Berry"] F. Neely (Figure 5), an African American man born in 1884 whose mother's maiden name is given as Harriet Dial.¹⁴ A nineteen-year-old woman named Harriet—of an age to have been Berry's mother—appeared in the 1870 household headed by Berry "Dile," with forty-seven-year-old Mariah and

8. Charles Simmons & David Anderson v. John Simmons et al., John Simmons to Elizabeth Simmons, bill of sale for slaves, 24 December 1793, "Exhibit B," fol. 117r. Also, bill of complaint, filed 5 June 1822, fol. 116r.

9. William Polk Will (1834), Wake County Wills, Inventories, Settlements of Estates, 1834-1841, C.099.80010, volume 23, page 46, print from microfilm, North Carolina State Archives, Raleigh.

10. "Interesting Anecdotes of Lafayette's Visit to Raleigh," *The Farmer and Mechanic* (Raleigh, North Carolina), 28 January 1888, [unpaginated], col. 1. "Old Henry Jett, Col. William Polk's coachman, . . . drove the second carriage in which were George Washington [and] Lafayette." Also, "The Late Paul C. Cameron," *North Carolina University Magazine* vol. X (1891), 188. "Old Henry Jet, the negro carriage driver" was the subject of an anecdote included in a tribute to a classmate of William Polk's son.

11. 1880 US census, Wake Co., N.C., pop. sch., Raleigh Twp., p. 5 (penned) and p. 311 (stamped), dwell./fam. 39, Henry Polk; NARA microfilm T9, roll 984. Also, 1870 US census, Wake Co., N.C., pop. sch., Raleigh Twp., p. 216 (penned), dwell./fam. 1614, Henry Jett; NARA microfilm 593, roll 1162. Also, *University v. Harrison*, February Term, 1884, Supreme Court of North Carolina, Vol. 90, 386. Henry Jett was called as a witness in an 1883 land dispute, and the North Carolina Supreme Court decision describes him as having been in the service of William Polk of Raleigh. Henry "had attained the age of ninety-three years, [and] testified that he was raised by William Polk."

12. "State census for the state of Alabama in the year 1866," *FamilySearch* (<https://www.familysearch.org/search/catalog/632558>).

13. "The Freedmen's Bureau," *National Archives* (<https://www.archives.gov/research/african-americans/freedmens-bureau?ga=2.38331877.758464669.1636070219-21950542.1636070219>).

14. South Carolina State Board of Health, death certificate no. 20225 (1938), Rev. B. F. Neely, Bureau of Vital Statistics, Columbia. For Berry's first name, 1900 US census, Laurens Co., S.C., pop. sch., Waterloo Twp., p. 42 (penned), ED 61, sheet 2, dwell. 26, fam. 27, Berry enumerated as a son in household of Richard and Harriet Neely.

Standard Certificate of Death
STATE OF SOUTH CAROLINA
Bureau of Vital Statistics
State Board of Health

1. PLACE OF DEATH
County of Sumter
Township of Sumter
City of _____
Home Address _____

2. FULL NAME B. F. Neely
3. SEX Male 4. COLOR OR RACE Cal 5. Single, Married, Widowed, or Divorced (write the word) Married
6. DATE OF BIRTH (Month, day, and year) 3-31-1884
7. AGE Years 54 Months 8 Days 6
8. Trade, profession, or particular kind of work done, as spinner, Sawyer, bookkeeper, etc. Preacher
9. Industry or business in which work was done, as silk mill, saw mill, bank, etc. _____
10. Date deceased last worked at this occupation (month and year) _____
11. Total time (years) spent in this occupation _____
12. BIRTHPLACE (city or town) (State or Country) Laurens, S.C.
13. NAME Richard Neely
14. BIRTHPLACE (city or town) (State or Country) Laurens, S.C.
15. MAIDEN NAME Harriet Dial
16. BIRTHPLACE (city or town) (State or Country) Laurens, S.C.
17. INFORMANT Chas. Berry Neely
18. BUNIAL, CREMATION, OR REMOVAL Place _____ Date _____
19. UNDERTAKER (Address) _____
20. FILED June 1, 1938 Chas. Berry Neely
21. DATE OF DEATH (month, day, and year) June 6, 1938
22. I HEREBY CERTIFY, that I attended deceased from _____
I last saw _____
The principal cause of death and related causes of importance in order of onset were as follows:
Acid indigestion - which
he was taking at
last home - fresh
was dead - sudden
Was this death due to pregnancy or to childbirth? If so, state which _____
Contributory causes of importance not related to principal cause: Indigestion - 1938
Name of operation _____ Date of _____
What test confirmed diagnosis? Was there an autopsy? Yes
23. If death was due to external causes (violence) fill in also the following:
Accident, suicide, or homicide? _____ Date of injury _____
Where did injury occur? _____
(Specify city or town, and state)
Specify whether injury occurred in industry, in home, or in public place.
Manner of injury _____
Nature of injury _____
24. Was disease or injury in any way related to occupation or deceased? _____
If so, specify _____
(Signed) D. W. Neely M. D.
(Address) Sumter, S.C.

Figure 5. B. F. Neely death certificate, 1938.

a negro man Berry which negro I desired to be sold, and the proceeds thereof to be equally divided

Figure 6. Excerpt from Hastings Dial will naming Berry [Sr.], 1850.

1	"	"	Tom	1000 00
1	"	"	Sam	950 00
1	"	"	Woman Mary	500 00
1	"	"	Mariah & 4 children	
			Cin Eliza Harriet & Berry	2100 00

Figure 7. Excerpt from Thomas Hood appraisal, 1854.

sixteen-year-old Berry Jr.¹⁵ The widowed Mariah's enumeration as a sister in the 1900 household of Thomas Hood suggests her maiden name.¹⁶

Harriet's parents were owned by different enslavers, so the entire family group does not appear in the same probate file. As shown in figure 6, the

elder Berry was held in bondage by a Dial enslaver.¹⁷ Mariah and her children—including Harriet and Berry Jr.—are listed in an appraisal in the probate file of a Hood slaveholder (figure 7).¹⁸ An enslaved man named Tom appears just two lines above Mariah's family group; he is probably the brother in whose household she lived in 1900.

Surveying the file

The entire probate file should be surveyed to determine information that is stated or can be inferred. The importance of reviewing the entire file is illustrated by the probate file of George McIntosh of Richmond County, North Carolina.¹⁹ Twenty-one "Negroes" are listed in an inventory (figure 8), with no details. The decedent's will, however, attaches names and relationships to people referenced in the inventory—including several women with children.²⁰

Take stock of the applicable laws as of the dates involved in the proceeding. For example, a will executed before 1820 in South Carolina might have provided for the emancipation of an enslaved person, but on 20 December 1820, the South Carolina legislature passed a law that "no slave shall hereafter be emancipated, but by act of the legislature."²¹ The 1820 enactment superseded any emancipation provision in a pre-existing will that had not yet taken effect.

Reasonable inferences

Some reasonable inferences can be made about enslaved people. Consider the excerpt from an

15. 1870 US census, Laurens Co., S.C., pop. sch., p. 24 (penned), dwell. 168, fam. 191, Berry Dile; NARA microfilm M5933, roll 1501.

16. 1900 US census, Laurens Co., S.C., pop. sch., Waterloo Twp., p. 320 (stamped) (penned), ED 61, sheet 7, dwell. 112, fam. 115, Mariah Dial in Thomas Hood household; NARA microfilm T623, roll 1534.

17. Estate of Hastings Dial, Sr. (1850), Laurens County, South Carolina, Probate Court, Bundle 82, Pkg 8, Will of Hastings Dial Sr., Probate Court, Laurens County.

18. Estate of Thos. Hood (1854), Laurens County, South Carolina, Probate Court, Box 121, Pkg. 1, Appraise Bill of the Personal Estate of Thomas Hood, 14 November 1856, Probate Court, Laurens County.

19. "George McIntosh Estate Records (1850)," Estate Records 1772–1993, Richmond County, C.R. 082.508.38, print from microfilm, North Carolina State Archives, Raleigh.

20. Ibid., Will of George McIntosh, "Recorded in Bound Book," written 18 July 1848; proved January Term 1849.

21. David J. McCord, "Wills and Testaments," *Statutes at Large of South Carolina, Volume Sixth, Containing the Acts of 1814, Exclusive, to 1838, Inclusive* (Columbia, S.C.: A. S. Johnson, 1839), 808.

An inventory of the personal estate of the late George McIntosh returned by his executor the R. McIntosh to this Honorable Court. To wit:

- 21. Negroes
- 40 head of cattle
- 75 hogs
- 15 sheep
- 3 horses
- 3 mules
- 19 bags cotton

Figure 8. Excerpt from George McIntosh inventory, 1850.

M. H. Langston Dr
1 Negro Boy Isaac 1150.00
Richard Anderson Dr
1 Negro Girl Betty 1080.00
Abner Babb Dr
2 Negroes Sam & Hannah 570.00

Figure 9. Jesse Garrett inventory excerpt, 1857.

Loves. I here and bequeath unto my wife Elizabeth Garrett during her natural life and at her death to be sold by my Executors herein after named and the money to be disposed of as I shall herein after direct. The following Real & Personal Estate. To Wit: The tract of land where on I now live containing Two hundred acres more or less adjoining lands of Dr. Hugh Saton. The widow Goodious. William Lindley and others. Sam & his wife Hannah. Sarah & her son Henry.

Figure 10. Jesse Garrett will excerpt, 1847.

inventory of sale prices in the probate file of Jesse Garrett of Laurens, South Carolina (figure 9).²²

Valuations can indicate youth, old age, or infirmity. Sam and Hannah are valued at a total of five hundred dollars. The two people listed immediately above them are valued at over one thousand dollars each. The difference in valuations suggests that Sam and Hannah might be elderly. Figure 10 is excerpted from the enslaver's will, where he refers to the couple as "Sam & his wife Hannah."²³ The inference about the couple's age is corroborated by the 1870 US census, where the same

couple is enumerated as eighty-four-year-old Sam and seventy-nine-year-old Hannah Garrett.²⁴

Unique descriptors

Identifying characteristics could help match subjects to same-named enslaved people or Freedmen found in other records.

For example, Sam and Hannah Garrett's implied age and identification as a couple aid in connecting them to an 1870 US census record. William Polk's 1834 will (figure 11) notes the occupations of enslaved people, identifying characteristics that could also be useful in matching individuals to other records.²⁵

Conclusion

The antebellum probate files of enslavers might specify or imply members of family groups among enslaved people, in addition to providing names or other identifying characteristics. After gleaning

the information in probate files, researchers should seek other records of the slaveholding family that might contain genealogical data about enslaved people, such as deeds, court records, account books, or family papers. 🌳

I give and bequeath the following Negroes. To Wit: my wife Sarah Polk the Negro man Jordan a Carpenter
" Son Thomas J. Polk the " " Humphrey Weaver & Shoemaker
" " " Lucius J. Polk " " " Jim a Carpenter
" " " Leonidas Polk " " " Joe " ditto
" Daughter Mary B. Polk " Col. " Charles " ditto
" Son Rufus N. Polk " Negro " Frank " Mason
" " Geo W. Polk " " " Harry " ditto
" Daughter Susan J. Polk " " " Stephen " Carpenter
" Son Andrew J. Polk " Col. " Paulina Black Smith

Figure 11. William Polk will excerpt, 1834.

22. Laurens County, South Carolina, Probate file, Bundle 132, Pkg. 10 (1853), "A Sale Bill of the Estate of Jesse Garrett," 7 December 1857; Office of the Probate Court, Laurens.

23. Ibid., Will of Jesse Garrett, 22 September 1847, proved 5 October 1853.

24. 1870 US census, Laurens Co., S.C., pop. sch., Laurens Twp., p. 110 (stamped), dwell. 60, fam. 63, Samuel Garrett.

25. William Polk Will (1834).